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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GULNORA DJAMA,

Defendant and Appellant.

B283611

Los Angeles County

Super. Ct. No. GA098431

APPEAL from an order of the Superior Court of Los Angeles County, Michael D. Carter, Judge. Affirmed.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Following a bench trial, defendant and appellant Gulnora Djama was convicted of allowing a mischievous animal to cause serious bodily injury to another person, criminal threats, and misdemeanor assault, and she pled no contest to misdemeanor unlawful transportation of marijuana. The court suspended imposition of sentence and placed Djama on probation for three years. On appeal, Djama contends there is insufficient evidence to support her conviction for criminal threats. We affirm.

PROCEDURAL BACKGROUND

The People charged Djama with the following offenses: allowing a mischievous animal to cause serious bodily injury to another person (Pen. Code,¹ 399, subd. (b); count 1); assault with a deadly weapon—a dog (§ 245, subd. (a)(1); count 3); criminal threats (§ 422, subd. (a); count 5); and “sale/offer to sell/transportation of marijuana” (Health & Saf. Code, § 11360, subd. (a); count 6).² As to count 3, the People alleged Djama personally inflicted great bodily injury on the victim, Monique De La Barcena.

The court bifurcated count 6 from counts 1, 3, and 5, and Djama waived her right to a jury trial on those three counts. Following a bench trial, the court found Djama guilty of allowing a mischievous animal to cause serious bodily injury to another person (count 1) and criminal threats (count 5), both felonies. As

¹ All undesignated statutory references are to the Penal Code.

² The People also charged Djama’s roommate and girlfriend, Elizabeth Liquidano, with several felonies in the same information. Liquidano is not a party to this appeal.

to count 3, the court found Djama not guilty of assault with a deadly weapon, but it found her guilty of the lesser-included offense of misdemeanor assault. As to count 6, Djama pled no contest to a misdemeanor violation of Health and Safety Code section 11360, subdivision (a). The court suspended imposition of Djama's sentence and placed her on three years' probation.

Djama filed a timely notice of appeal.

FACTUAL BACKGROUND

1. Prior Incidents Involving Djama's Dog

Between late 2015 and early 2016, De La Barcena lived in an apartment complex in Alhambra. Djama and Liquidano lived together in a different apartment in the same complex, and they owned an 80- to 85-pound pit bull dog named Tyson.

In November 2015, Maria Gutierrez, a resident in Djama's and De La Barcena's complex, was taking out her trash when Tyson jumped a fence and ran toward her. Djama went outside, called Tyson's name, grabbed the dog, and brought him back inside her apartment.

In December 2015, Jennifer Miranda, who lived in the same apartment complex, encountered Tyson while she was taking out her trash. The dog, who was off leash, ran toward Miranda. As Miranda tried to climb over a wall to get away from Tyson, the dog bit her ankle, inflicting a puncture wound. Miranda tried to kick the dog away, but he jumped on her chest. Miranda eventually pushed the dog out of the way and jumped over the wall. Miranda told De La Barcena about the incident, and De La Barcena confronted Djama and Liquidano about leaving Tyson off leash.

In January 2016, De La Barcena and her ex-boyfriend, Anthony Saucillo, were standing in the apartment complex's parking lot when Djama and Liquidano drove up. Djama and Liquidano stopped their car and started yelling at De La Barcena and Saucillo. One of the defendants approached De La Barcena and said, "Fuck you. I will kill you. You don't want to mess with me. You don't know what I could do to you." Tyson, who was with defendants, then got off his leash and ran toward Saucillo. The dog bit the bottom of Saucillo's jeans before Djama pulled the dog away.

2. The Underlying Confrontation

During the afternoon of March 20, 2016, De La Barcena, her cousin, Eileen Valencia, and her friend, Martha Urias, arrived at De La Barcena's apartment complex. As they were standing in the parking lot, Valencia saw Tyson, who was off leash, near Djama's apartment. Tyson ran toward Valencia and started biting her shoe. Valencia tried to fend Tyson off by hitting him with a grocery bag.

Djama eventually came outside and grabbed Tyson by his neck. De La Barcena told Djama that she was tired of having to remind Djama to keep the dog on a leash. When Liquidano came outside, De La Barcena said the same thing to her. Liquidano then shoved De La Barcena with both hands, and De La Barcena shoved Liquidano back. As Liquidano and De La Barcena were shoving each other, Djama, who was still holding onto Tyson, yelled at De La Barcena, "I'll fucking kill you." Djama threatened to kill De La Barcena four or five more times while holding onto Tyson. De La Barcena testified that she was scared for her safety based on Djama's threats.

As De La Barcena and Liquidano continued to shove each other, Djama released Tyson, who charged at De La Barcena. Tyson started to bite De La Barcena's left ankle as Liquidano grabbed De La Barcena by the arms and threatened to kill her. De La Barcena fell to the ground as Tyson continued to bite her ankle. Liquidano then got on top of De La Barcena and repeatedly pushed her, causing the back of De La Barcena's head to strike the ground at least two times. While she was still on the ground, De La Barcena stuck her fingers inside Tyson's mouth to try to force him to release his grip.

Djama eventually grabbed the dog and pulled him off of De La Barcena.³ As she pulled Tyson away, Djama said to De La Barcena, "You see? This is what happens. I'll kill you." Djama and Liquidano took Tyson back to their apartment.

Shortly after taking Tyson inside the apartment, Djama went back outside and approached De La Barcena, who was still sitting on the ground. Djama got in De La Barcena's face and said, "You want to fight my girlfriend? Fight me. ... I'll kill you" De La Barcena testified that she was still scared for her safety when Djama threatened her that final time. Shortly after the altercation, Djama and Liquidano drove away from the apartment complex with Tyson inside their car.

³ Tyson inflicted several deep puncture wounds to De La Barcena's left ankle, requiring her to receive medical attention. De La Barcena had to wear a soft cast on her left ankle, and she missed almost four months of work and had to attend physical therapy for about two months, as a result of her injuries. She continued to feel sharp pain and had not regained full movement in her left ankle as of the time of trial, or more than a year after the incident.

DISCUSSION

Djama contends insufficient evidence supports her conviction for criminal threats. Specifically, Djama argues there was insufficient evidence to establish: (1) that her threats to kill De La Barcena were so unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose with an immediate prospect of execution; and (2) that her threats caused De La Barcena to reasonably be in sustained fear for her safety. As we shall explain, substantial evidence supports Djama's criminal threats conviction.

When a defendant challenges the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether any rational trier of fact could have found the evidence proved the elements of the crime beyond a reasonable doubt. (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.) We draw all reasonable inferences in favor of the judgment and do not resolve credibility issues or evidentiary conflicts. (*Ibid.*) We apply this standard whether direct or circumstantial evidence is involved. (*People v. Avila* (2009) 46 Cal.4th 680, 701.) If the circumstances reasonably justify the trier of fact's findings, we cannot reverse the judgment even if we believe contrary findings could have been made based on the same evidence. (*People v. Cravens* (2012) 53 Cal.4th 500, 508.) Therefore, before we may set aside the judgment, it must be clear that “ ‘ ‘upon no hypothesis whatever is there sufficient substantial evidence to support it.” ’ ” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

To support a conviction for criminal threats under section 422, the People must prove: (1) the defendant willfully threatened to commit a crime which would result in death or

great bodily injury; (2) the defendant made the statement with the intent that it be taken as a threat; (3) the threat, on its face and under the circumstances in which it was made, was so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat; and (4) the threat caused the other person reasonably to be in sustained fear for her own safety or for the safety of her immediate family, regardless of whether the defendant actually intended to carry out the threat.⁴ (*People v. Butler* (2000) 85 Cal.App.4th 745, 753 (*Butler*).) Section 422 was not enacted to punish emotional outbursts; rather, it targets “ ‘those who try to instill fear in others.’ ” (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 861.)

“[I]t is the circumstances under which the threat is made that give meaning to the actual words used.” (*Butler, supra*, 85 Cal.App.4th at p. 753.) Thus, “ ‘[t]he determination whether a defendant intended [her] words to be taken as a threat, and whether the words were sufficiently unequivocal, unconditional, immediate and specific they conveyed to the victim an immediacy of purpose and immediate prospect of execution of the threat can be based on all the surrounding circumstances and not just on the words alone. The parties’ history can also be considered as one of the relevant circumstances. [Citations.]’ [Citation.]” (*Id.* at p. 754.)

⁴ As noted, Djama challenges only the third and fourth elements needed to establish a violation of section 422; she does not dispute that she willfully threatened to commit a crime resulting in death or great bodily injury or that she intended her statements to be taken as a threat. Accordingly, our analysis focuses only on the third and fourth elements required to establish a criminal threat.

Here, substantial evidence establishes that Djama's threats to kill De La Barcena were sufficiently unequivocal, unconditional, immediate, and specific to satisfy the requirements of section 422. Djama expressly, repeatedly, and unequivocally threatened to commit a crime that would result in serious bodily injury or death to De La Barcena—i.e., Djama repeatedly threatened to kill De La Barcena. Djama did not use ambiguous, vague, conditional, or nonverbal language that, taken by itself, would not convey a gravity of purpose or immediate prospect of execution of a threat.

The circumstances surrounding Djama's statements further demonstrate the immediacy and gravity of her threats to kill De La Barcena. Djama uttered the threats shortly after De La Barcena complained about Djama and Liquidano allowing Tyson to be off leash around the apartment complex, an issue that had been a point of contention between the neighbors for several months. Djama made several of the threats while she held on to Tyson, who had just tried to attack one of De La Barcena's companions and who De La Barcena knew to be violent based on her prior interactions with the dog. And Djama continued to threaten to kill De La Barcena after Djama released Tyson, allowing him to attack and inflict serious bodily injury upon De La Barcena. The manner in which Djama uttered her threats to kill De La Barcena "emphasized [Djama's] willingness and intent to hurt [De La Barcena] if she did not mind her own business." (*Butler, supra*, 85 Cal.App.4th at p. 754.)

There also is substantial evidence to support a finding that De La Barcena reasonably was in sustained fear for her safety as a result of Djama's threats. De La Barcena testified that she feared for her safety when Djama uttered each threat, all of

which were made before, during, and after De La Barcena's physical altercation with Liquidano and Tyson. De La Barcena's fear was more than momentary, fleeting, or transitory, as that altercation lasted for several minutes. (See *People v. Fierro* (2010) 180 Cal.App.4th 1342, 1349 ["sustained" as it is used in section 422 means " 'a period of time that extends beyond what is momentary, fleeting, or transitory' "].) And De La Barcena's fear was more than reasonable based on the circumstances surrounding Djama's threats, including the fact that Djama allowed Tyson to attack and inflict serious bodily injury upon De La Barcena immediately before and after Djama threatened to kill her. (See *People v. Garrett* (1994) 30 Cal.App.4th 962 [the victim's awareness of the defendant's capacity to carry out acts of violence is probative of whether the victim's fear was reasonable].)

We also reject Djama's argument that De La Barcena's fear of Djama's threats could not have been reasonable because De La Barcena was not afraid of pit bull dogs. De La Barcena testified that she "ha[d] no particular fear" of pit bulls because she had previously owned several of them. She never testified, however, that she was not afraid of Tyson, or that she was not afraid that he or Djama could inflict serious bodily injury or death during the underlying altercation.

In sum, we conclude substantial evidence supports Djama's conviction for criminal threats.

DISPOSITION

The order is affirmed.

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LAVIN, Acting P.J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.